

UNITED STATES BANKRUPTCY COURT
MIDDLE DISTRICT OF NORTH CAROLINA
DURHAM DIVISION

In re:

Evelyn Stubbs,

Bankruptcy Case No.: 10-80950

Soc. Sec. No. xxx-xx-4762

Mailing Address: 619 Old Oxford Highway,
Durham, NC 27704-

Debtor.

Evelyn Stubbs,

and

A.P. No.: 10-9082

Richard M. Hutson, II, Trustee

Plaintiffs,

v.

Household Realty Corporation,

Defendant.

AMENDED COMPLAINT DETERMINE VALIDITY OF LIEN

The Plaintiff, above-named, respectfully alleges as follows:

1. That this matter is a core proceeding pursuant to 28 U.S.C. § 157, and that the court has jurisdiction pursuant to 28 U.S.C. §§ 151, 157 and 1334.
2. This Complaint was filed, pursuant to 11 U.S.C. §§ 506, 544, 1325(a)(4) and 1329, N.C.G.S. § 47-20 and in accordance with Bankruptcy Rule 7001, for the purpose of determining the validity of the mortgage claim held by Household Realty Corporation.
3. The Plaintiff, Evelyn Stubbs, filed this bankruptcy case on May 28, 2010, seeking protection under Chapter 13 of Title 11 of the United States Code.
4. The Plaintiff, Richard M. Hutson, II, was appointed as Trustee for the Debtor on May 28, 2010.
5. The Defendant Household Realty Corporation is a corporation and/or a partnership with an office and principal place of business located at Post Office Box 8626, Elmhurst, IL 60126 and/or 26525 North Riverwoods Blvd., Mettawa, IL 60045 .
6. The Plaintiff Stubbs owns real property located at 619 Old Oxford Highway, Durham NC 27704. The legal description of the property is as follows:

BEING all of Lots 13 and 14 of Block A of the H.C. King Property as per plat and survey thereof now on file in the Office of the Register of Deeds of Durham County in Plat Book 6 at Page 47, to which plat reference is hereby made for a more particular description of same. The tax map or parcel ID No. is: 9833-14-43-3570.

7. This property was previously owned by the Plaintiff Stubbs and her husband, Lonnie E. Stubbs, as tenants by the entireties.
8. Lonnie E. Stubbs is deceased.
9. Household Realty Corporation holds a Deed of Trust on such property with a payoff balance, as of the date this case was filed in the amount of approximately \$118,669.35. This Deed of Trust was recorded on August 7, 2006, in Book 5314 at Page 592, Durham County Registry of Deeds.
10. The fair market value of the said property is not greater than \$54,740.00.
11. Said Deed of Trust describes the property as follows:

All of that certain property situated in the Township of City outside in the County of Durham and State of North Carolina, being more fully described in a Deed dated 08/05/1977 and recorded 08/12/1977, among the land records of the County and State set forth above, in Deed Volume 948 and Page 127. Tax Map or Parcel ID No.: 171714-737-03-005
12. In addition to incomprehensible grammar (“situated in the Township of City outside in the County of Durham and State of North Carolina”), Deed Book 948 and Page 127, references a Deed between Sidney H. Allen and wife, Anne P. Allen to M.D. Fletcher, Jr. and wife, Bonnie T. Fletcher.
13. This Deed does not describe Plaintiff Stubb’s property.
14. The Deed for the Plaintiff Stubb’s property is actually recorded at Book 948 and Page 1027 of the Durham County Registry of Deeds.
15. Pursuant to N.C.G.S. § 47-20, no Deed of Trust is effective as against lien creditors or purchasers for value until the instrument is “registered” in the office of the appropriate register of deeds and the instrument has priority based on the order of registration determined at the time of registration.
16. Pursuant to 11 U.S.C. § 544(a)(3), the Plaintiff Trustee has, as of the commence of the case, the rights and powers of, or may avoid any transfer of property of the debtor that is voidable

by a bona fide purchaser of real property from the debtor, against whom applicable law permits such transfer to be perfected, that obtains the status of a bona fide purchaser and has perfected such transfer at the time of the commencement of the case, whether or not such purchaser exists.

17. As of the commencement of the bankruptcy case, the Deed of Trust was not properly registered with the Durham Register of Deed and, as a result, the Deed of Trust is not valid to create an interest in the property as against a lien creditor or purchaser for value as provided in N.C.G.S. § 47-20, thereby permitting the Plaintiff Trustee to avoid the Deed of Trust pursuant to 11 U.S.C. § 544(a)(3).

WHEREFORE, the Plaintiffs pray the Court find and grant relief as follows:

1. That said Deed of Trust held by Household Realty Corporation is void as it fails to describe property of the Plaintiff Stubbs;
2. Alternatively, that said Deed of Trust held by Household Realty Corporation be avoided pursuant to 11 U.S.C. § 547(b);
3. That any claim of Household Realty to be wholly unsecured for the purpose of this Chapter 13 case.
4. That a fully executed Cancellation of said Deed of Trust be forwarded from the Defendant to the Plaintiff Trustee and be retained by the Trustee until successful completion of the this Plan, at which time such Cancellation shall be recorded with the Durham County Register of Deeds;
5. In the event the Plaintiff Stubbs fails to successfully complete the Chapter 13 Plan, the Plaintiff Trustee shall deliver the Cancellation of the Deed of Trust to a Chapter 7 Trustee, if the underlying case is converted to Chapter 7, or, upon dismissal of the underlying case, return the Cancellation to Defendant and the voiding or avoidance of the lien shall be rescinded;
6. That the Plaintiff Stubb's Chapter 13 plan be modified, pursuant to 11 U.S.C. § 1329, to increase the dividend to unsecured creditors, such that the time period and payments under the plan shall not be reduced from the amount confirmed, but that payments due may be increased in order that the liquidation requirements of 11 U.S.C. § 1325(a)(4) shall be satisfied, with the Plaintiff Stubbs being allowed her available exemption if the lien is void, and without such exemptions if the lien is avoided.
7. That the Court grant such other and further relief as to the Court seems just and proper.

Dated: August 19, 2011

LAW OFFICES OF JOHN T. ORCUTT, P.C.

/s Edward Boltz

Edward Boltz

Attorney for the Plaintiff Stubbs

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In re:

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Debtor.

Bankruptcy Case No.: 10-80950

Evelyn Stubbs,

Plaintiff, A.P. No.: _____

Household Realty Corporation,

Defendant.

CERTIFICATE OF SERVICE

I, Renee Nolte, certify that service of the **Summons** issued in this adversary proceeding, together with a copy of the **Amended Complaint**, was made on _____ (date), by:

Mail service: **Regular, first class United States mail**, postage fully pre-paid, addressed to:

Richard M. Hutson, II
Chapter 13 Trustee
Post Office Box 3613
Durham, N C 27702

Michael D. West
Bankruptcy Administrator
Post Office Box 1828
Greensboro, NC 27402

Household Realty Corporation
Attn: Managing Agent
Post Office Box 8626
Elmhurst, IL 60126

CT Corporation System
Registered Agent
150 Fayetteville St.
Box 1011
Raleigh, NC 27601-

Household Realty Corporation
Attn: Managing Agent
26525 North Riverwoods Blvd.
Mettawa, IL 60045

C. Marshall Lindsey
Attorney for Defendant
525 North Tryon Street
Suite 1400
Charlotte NC 28202

and also by **certified mail, return receipt requested**, addressed to:

Household Realty Corporation
Attn: Managing Agent
Post Office Box 8626
Elmhurst, IL 60126

CT Corporation System
Registered Agent
150 Fayetteville St.
Box 1011
Raleigh, NC 27601

Household Realty Corporation
Attn: Managing Agent
26525 North Riverwoods Blvd.
Mettawa, IL 60045

Under penalty of perjury, I declare that the foregoing is true and correct.

Date: _____

/s Renee Nolte

Renee Nolte